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Mr. McNary

September 17, 1962

STATINTL

New draft of CIA retirement legislation.

As explained in the attached letter from General Carter to the Director, the House Armed Services Committee requested CIA to provide a detailed draft bill for the proposed CIA retirement system in place of the "short version" cleared by the Bureau on August 13, 1962. Specifically, the new draft, also attached, provides, in lieu of amending the CIA Act of 1949 through the incorporation by reference of the retirement system and miscellaneous benefit provisions of the Foreign Service Act of 1946, detailed language drawn from the Act itself with appropriate modification for inclusion in an amended version of the CIA basic law.

As stated in General Carter's letter, the sections of the new draft generally represent direct borrowing from the Foreign Service Act with several minor exceptions, as follows:

Miscellaneous Benefits:

The sections of the CIA basic act giving miscellaneous authorities to the DCI are amended to include several minor authorities contained in the Foreign Service Act but which are not in the CIA law; these involve certain travel and hospitalization expenses. Also included is one provision not in the Foreign Service Act which would authorize the Agency to provide orientation and language training to members of families of employees prior to overseas assignment. Approval of this section would by specific legislative language endorse an administrative practice which has been conducted by CIA for several years under general authority contained in the CIA enabling act.

Retirement System:

Section 862 of the Foreign Service Act, providing for annual reports to the Congress on the condition of the retirement fund and estimates of appropriations for its financing, is not included in the CIA amendment. Presumably, information as to the condition of the fund and an annual request for appropriations would be made as part of the CIA's regular budget request and justification to the Congress.

Section 271 of the proposed CIA bill, regarding the recall of an assistant to active duty, is analogous to Section 871 of the Foreign Service Act, except that in the CIA version the DCI would be given the authority to recall any pensioner to duty whenever he determines

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that such recall would be in the public interest. The language implies that a refusal would terminate benefits under CIA's retirement system.

CIA's draft contains a provision (Section 273), not in the Foreign Service Act, which explicitly states that any Agency employee who might be retired under the provisions of CIA's retirement system would not be barred from further Federal employment.

Mr. Cannon of Legislation Reference informs me that the Agency, in responding to the Committee's request, performed a "drafting service" which was not subject to a new clearance by the Bureau. Similarly, the Bureau is not obligated to provide formal comments to the Agency on the new draft, although it is accepted practice to point out informally any particular problems that are noted with such a draft bill.

Comments:

The draft bill, cleared by the Bureau would have allowed considerable flexibility to the Director of Central Intelligence in developing the detailed provisions of a CIA retirement system, inasmuch as it authorized him "to establish a corresponding retirement and disability system (i.e., corresponding to the Foreign Service retirement system) for such employees and classes as he may designate from time to time." (Underlining supplied) In contrast, the draft prepared at the Committee's request, by adopting in complete detail the various provisions of the system set forth in the Foreign Service Act, removed much of the flexibility of the short version which would have permitted CIA to establish detailed arrangements for the system through administrative regulations. Extension of the detailed provisions of the Foreign Service Act retirement system to a CIA system presents several problems.

One potential difficulty involves security. Inasmuch as the CIA employees who would be covered by a new retirement system include the career operative or case officer employees whose association with the Agency is closely guarded, the involvement of the Treasury Department in the "maintenance of the fund" and the "preparation of estimates for the annual appropriation to the fund" set forth in new Sections 202 and 261, may go further than is compatible with good security practices.

Mr. Tiller has noted issues on other grounds regarding the involvement of the Treasury Department as proposed in the new draft. Section 202 of the new draft bill now reads: "The Secretary of the Treasury shall maintain the

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special fund, known as the Central Intelligence Agency Retirement and Disability Fund, referred to hereafter as the Fund." He would prefer the following language which would leave no doubt that the Treasury's role is restricted to a depository one: "There is hereby established in the Treasury of the United States a separate fund known as the Central Intelligence Agency Retirement and Disability Fund, hereafter referred to as the Fund."

Mr. Tiller feels that Section 261, which directs the Secretary of the Treasury to prepare estimates of the annual appropriation required for the fund, and Section 261(b) which directs the Secretary to prescribe mortality tables for purposes of computing certain benefits, preferably should be so written as for these functions to be performed by the Director of Central Intelligence, inasmuch as both functions, in order to be accomplished effectively, would require considerable knowledge of CIA's employees and programs which have a bearing on questions of disability.

Mr. Tiller also noted that the effect of Section 262, which requires the Secretary of the Treasury to invest the moneys deposited to the fund is at cross purposes with the Secretary's important function of minimizing the interest payments on the public debt. To avoid this, he recommends that instead of placing the investment responsibility in the Secretary, he be directed to make available certain public bond issues for the investment of the Fund's moneys. This practice is followed in respect of certain other Government retirement funds.

Section 252(c)(1) provides that any employee who has been previously covered by some other Government retirement system (such as the Civil Service system which now covers all of CIA's employees) may, upon becoming a participant in the new system, withdraw his contributions for deposit to the new system. It would seem advisable that in order to establish the proposed fund on as firm a basis as possible, that provision should also have been included in the draft bill to authorize CIA to withdraw its matching contribution from the other, e.g., Civil Service, system for transfer to the new fund.

Mr. McAfee of OMD and Mr. Cannon, both of whom participated in the clearance of the short version and have received copies of the new draft, do not have substantive comments on the detailed draft bill.

Recommendation:

That the issues noted above which arise over the substitution of the detailed draft for the short version cleared by the Bureau be brought informally to the attention of Agency staff.

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